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Fresh Acquisitions Liquidating Trust*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
	§	Chapter 11
Debtors.	§	(Jointly Administered)

LIQUIDATING TRUSTEE'S SECOND REPORT OF PROFESSIONAL FEES AND COSTS

¹ The Debtors in these Chapter 11 cases ("Debtors") and the last four digits of each Debtor's Taxpayer Identification Number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998).

David Gonzales as Liquidating Trustee (“**Trustee**”) of the Fresh Acquisition Liquidating Trust (“**Trust**”) files this report of professional fees and costs incurred and paid by the Trust for the three-month period of time from June 1 to August 31, 2022 (the “**Fee Period**”).

BACKGROUND

1. On April 20, 2021 (the “**Petition Date**”), each of the Debtors filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code.

2. The Trust was formed pursuant to the Fresh Acquisition Liquidating Trust Agreement (“**Trust Agreement**”) as of January 3, 2022, the **Effective Date** of *The Official Committee of Unsecured Creditors’ First Amended Joint Chapter 11 Plan of Liquidation* filed on October 30, 2021 (the “**Plan**”) [Doc. No. 498]. The Plan was confirmed pursuant to the *Findings of Fact, Conclusions of Law, and Order (I) Approving Disclosure Statement on a Final Basis and (II) Confirming the Official Committee of Unsecured Creditors’ First Amended Joint Chapter 11 Plan of Liquidation* entered on December 20, 2021 (“**Confirmation Order**”) [Doc. No. 587].

3. The Plan provides *The Liquidating Trustee may employ, without order of the Court such counsel (which may be the same counsel employed by the Committee), financial advisors (which may be Caliber which is presently employed by the Committee) and other professionals, agents and advisors selected by the Liquidating Trustee that are reasonably required to perform the Liquidating Trustee’s responsibilities under the Plan. The Liquidating Trust’s professionals shall be compensated at their respective standard hourly rates or on a contingency fee basis*

as agreed to by the Liquidating Trustee, without further motion, application notice, or other order of the Court. The fees and expenses of the Liquidating Trust's professionals shall be satisfied from the Liquidating Trust Assets. Article IVD.

4. *The Trust Agreement provides The Liquidating Trust may employ the Liquidating Trust Professionals without further order from the Bankruptcy Court. The Liquidating Trust Professionals shall be compensated on such basis as agreed to by the Liquidating Trustee without further motion, application, notice or other order of the Bankruptcy Court. The fees and expenses of the Professionals shall be paid from the Liquidating Trust Assets. Article I, para. 7*

5. *The Liquidating Trustee shall be compensated \$10,000 per month and shall be reimbursed for his/her out-of-pocket expenses incident to the performance of his/her duties under this Liquidating Trust Agreement. The fees and expenses of the Liquidating Trustee shall be satisfied out of the Liquidating Trust Assets and shall be in accordance with the Liquidating Trust Administrative Reserve. The Liquidating Trustee shall be compensated under the terms provided herein without further motion, application, notice or other order of the Bankruptcy Court. Article V, para. 10*

6. On May 13, 2022, the Court entered its *Sua Sponte Order Directing Fee Reporting by the Fresh Acquisitions Liquidating Trustee* (the "**Fee Order**") [Doc No. 708] requiring the Trustee to file quarterly reports setting forth the amount of fees accrued by and paid to the Trustee and the amount of fees accrued by and paid to any professional employed by the Trustee.

7. This Report is the second report due pursuant to the Order.

PROFESSIONAL FEES AND COSTS

A. Attorneys' Fees and Costs

8. On or about January 17, 2022, the Trust engaged the firm of Dickinson Wright, PLLC ("**DW**") as its legal counsel. DW served as counsel for the Official Committee of Unsecured Creditors during the Chapter 11 Case. The Trust and DW agreed to DW's standard billing rates except that senior lawyers would bill the rates they charged during the bankruptcy: Carolyn Johnsen reduced from \$840 to \$655 per hour; William Novotny reduced from \$700 to \$655 per hour; and Robert Shull reduced from \$795 to \$655 per hour.

9. During the Fee Period, DW's services included

- Continued investigation, research and drafting of 66-page complaint against multiple defendants for avoidance of transfers and breaches of fiduciary duty; multiple meeting with the Trustee
- Continued review of over 500 proofs of claim and scheduled claims for 15 Debtors; filed and resolved multiple objections to claims
- Filing an adversary action and recovering funds held from prior bankruptcies
- Obtaining a monetary settlement with one of the Debtors' former managers
- Researching and preparing action relating to undisclosed bank account
- Pursuing additional discovery from Debtors' bank
- Pursuing recovery of other assets including abandoned liquor licenses

10. For services rendered during the Fee Period, DW incurred and invoiced \$207,881.17 in fees and \$10,999.93 in costs for a total of \$218,881.10 ("**DW Billed Amount**").

11. The Billed Amount reflects voluntary reductions of \$67,536.33 in fees and \$33,479.20 in costs for a total of \$101,015.53.

12. \$44,128.37 of the DW Billed Amount has been paid.

B. Accounting and Forensic Research Fees and Costs

13. Immediately after the Effective Date, the Trust engaged the firm of Caliber Advisors, LLC ("**Caliber**") to perform accounting work including reviewing financial data and preparing necessary financial statements. Caliber performed extensive work in reviewing and analyzing proofs of claim particularly with respect to those filed by taxing authorities. It also provided extensive financial analysis for causes of action to be pursued against former management companies and managers.

14. For services rendered during the Fee Period, Caliber incurred and invoiced \$63,250.00 in fees and costs. ("**Caliber Billed Amount**").

15. \$63,250.00 of the Caliber Billed Amount has been paid.

C. BMC Group, Inc.

16. The Trust incurred and paid \$14,497.92 to BMC Group, Inc. for noticing services it provided post-Effective Date.

TRUSTEE FEES AND COSTS

17. During the Fee Period, the Trustee managed cash and paid required administrative expenses, interfaced with legal counsel to develop strategy for all litigation, met with and supervised accounting and consulting firms, contacted and met with various individuals regarding background information and possible settlements, and managed the claims objection process.

18. In accordance with the Trust Agreement, the Trustee was entitled to compensation of \$10,000 per month for a total of \$30,000 during the Fee Period.

19. The Trustee has been paid \$30,000.

Dated: October 3, 2022.

Respectfully submitted,

/s/ Carolyn J. Johnsen
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CERTIFICATE OF SERVICE

I hereby certify that Notice of this document was electronically filed and served to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District on October 3, 2022.

/s/ Carolyn J. Johnsen
Carolyn J. Johnsen

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